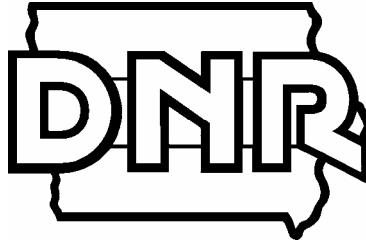


Request for Proposals

Dam Breach Analysis and Associated Survey Work



**Iowa Department of Natural Resources
Water Quality Bureau
Water Resources Section**

**Wallace State Office Building
502 E 9th St.
Des Moines, IA 50319**

June 1, 2006

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Section 1 Introduction

1.1 Purpose

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified service providers to provide dam breach analysis and survey data needed for the breach analysis for specific dams identified by the Department.

1.2 Duration

The Department intends to award a contract beginning on or about September 1, 2006, for a period of 2 years.

1.3 Background Information

This RFP is designed to provide vendors with information necessary for the preparation of competitive bid proposals. The RFP process is for the Iowa Department of Natural Resources (Department) benefit and is intended to provide the Department with competitive information to assist in the selection process. It is not intended to be comprehensive. Each vendor is responsible for determining all factors necessary for submission of a comprehensive bid proposal.

The Iowa Department of Natural Resources is the state agency responsible for the dam safety program in Iowa. The dam safety program consists of reviewing proposals for new dams to assure that they meet all applicable department criteria and periodic inspections of existing major dam structures. In addition, inspections are made of existing non-major dams in urbanizing areas to determine if urbanization has affected the downstream hazard class of the dam.

The department wants to expand the dam safety program to include a determination of the effects of a dam failure on lands, buildings and other structures downstream of numerous dams. The need for this information two fold. First, it is desirable to have a failure analysis and dam failure inundation mapping for all high hazard potential dams so that information can be incorporated into an emergency action plan for each dam. Second, there are existing dams for which the originally assigned hazard class is now in question because of development that has occurred downstream of the dam since its construction. The analysis is needed to better assess the current hazard class so as to determine if the dam meets current standards associated with its present hazard classification.

The department is seeking a contractor to undertake dam breach analysis on several specific dams and to prepare inundation mapping of the dam breach flood zone. As part of that analysis, geographic and geometric information will need to be obtained for areas downstream of the dam. Downstream houses, buildings and other structures subject to damage from a dam breach flood will need to be identified. Additionally, the pertinent dimensions of the dam and spillway will have to be verified.

Section 2 Administrative Information

2.1 Issuing Officer

The Issuing Officer identified below is the sole point of contact regarding the RFP from the date of issuance until selection of the successful vendor.

Dave Allen, Issuing Officer
Iowa Department of Natural Resources

Water Quality Bureau
502 E 9th St.
Des Moines, IA 50319

2.2 Restriction on Communication

From the issue date of this RFP until announcement of the successful vendor, vendors may contact only the Issuing Officer. The Issuing Officer will respond only to questions regarding the procurement process. Questions related to the interpretation of this RFP must be submitted in writing to the Issuing Officer by 4:30 p.m., Central Standard Time, by the date listed in Section 2.4, Procurement Timetable. Verbal questions related to the interpretation of the RFP will not be accepted. Vendors may be disqualified if they contact any state employee other than the Issuing Officer.

2.3 Downloading the RFP from the Internet

Any amendments and the original RFP will be posted on the Water Quality section home page at:

<http://www.iowadnr.com/rfp.html>

and

<http://eservices.iowa.gov/rfp/>

The vendor is advised to check the web site periodically for amendments to this RFP, particularly if the vendor downloaded the RFP from the Internet, as the vendor may not automatically receive amendments. If the vendor submitted the Intent to Bid, the vendor will automatically receive amendments.

2.4 Procurement Timetable

The following dates are set forth for informational and planning purposes; however, the Department reserves the right to change the dates.

| | |
|--|-------------------------|
| Intent to Bid Form and Questions Due | Thursday, June 15, 2006 |
| Closing Date for Receipt of Bid Proposals and Amendment to Bid Proposals | Friday, June 30, 2006 |
| Announce Successful Vendor | Friday, July 21, 2006 |
| EPC Approval for contracts over \$25,000 | Monday, August 21, 2006 |

2.5 Questions, Requests for Clarification, and Suggested Changes

Vendors are invited to submit written questions, requests for clarifications, and/or suggestions for changes to the requirements of this RFP. The specific section of the RFP, the page and section numbers(s) must be referenced. These must be received by the Issuing Officer before 4:30 p.m., Central Standard Time, on the date listed in the Procurement Timetable, Section 2.4.

Vendors who submit the Intent to Bid form will receive a written response. The Department's written responses will be considered part of the RFP. If the Department decides to adopt a

suggestion to make a change in the RFP, the Department will issue an amendment to the RFP. This will be reflected on the web site, as listed in Section 2.3.

Oral questions will not be permitted. The Department assumes no responsibility for verbal representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP.

2.6 Amendment to the RFP and Bid Proposal and Withdrawal of Bid Proposal

The Department reserves the right to amend the RFP at any time. The vendor shall acknowledge receipt of an amendment in its proposal. If the amendment occurs after the closing date for receipt of bid proposals, the Department may, in its sole discretion, allow vendors to amend their bid proposals in response to the Department's amendment if necessary.

The vendor may amend its bid proposal. The amendment must be in writing, signed by the vendor and received by time set for receipt of proposals by the date listed in Section 2.4, Procurement Timetable. Electronic mail and faxed amendments will not be accepted.

Vendors who submit proposals in advance of the deadline may withdraw, modify, and resubmit proposals at any time prior to the deadline for submitting proposals. Vendors must notify the Issuing Officer in writing if they wish to withdraw their proposals.

2.7 Mandatory Intent to Bid Form

An intent to bid form (Attachment #1) must be mailed, sent via delivery service or hand delivered by the vendor or the vendor's representative to the Issuing Officer and received by 4:30 p.m., Central Standard Time, by the date listed in Section 2.4, Procurement Timetable. The letter of intent to bid must include the vendor's name, mailing address, electronic mail address, fax number, telephone number, a statement of intent to bid for this contract, and contain an authorizing signature.

Submitting an intent to bid form is a mandatory condition to submit a bid proposal and to ensure receipt of written responses to vendor's questions and amendments to the RFP. Failure to submit an Intent to Bid form by the deadline specified will result in the rejection of the vendor's bid proposal.

2.8 Submission of Bid Proposals

The Department must receive the bid proposal at 502 E9th St., Des Moines, IA 50319 before 4:30 p.m., Central Standard Time, by the date listed in Section 2.4, Procurement Timetable.

This is a mandatory requirement and will not be waived by the Department. Any bid proposal received after this deadline will be rejected and returned unopened to the vendor. Vendors mailing bid proposals must allow ample mail delivery time to ensure that the bid proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the bid proposal. Electronic mail and faxed bid proposals will not be accepted.

Vendors must furnish all information necessary to evaluate the bid proposal. Bid proposals that fail to meet the mandatory requirements of the RFP will be disqualified. Verbal information provided by the vendor shall not be considered part of the vendor's proposal.

2.9 Cost of Preparing the Bid Proposal

The cost of preparation and delivery of the bid proposal are solely the responsibility of the vendor.

2.10 Rejection of Bid Proposals

The Department reserves the right to reject any or all bid proposals, in whole and in part, received in response to this RFP at any time prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by the Department to award a contract.

2.11 Disqualification

The Department shall reject outright and shall not evaluate proposals for any one of the following reasons:

- 2.11.1** The vendor fails to deliver the bid proposal by the due date and time.
- 2.11.2** The vendor states that a service requirement cannot be met.
- 2.11.3** The vendor's response materially changes a service requirement.
- 2.11.4** The vendor's response limits the rights of the Department.
- 2.11.5** The vendor fails to include information necessary to substantiate that it will be able to meet a service requirement. A response of "will comply" or merely repeating the requirement is not sufficient. Responses must indicate present capability; representations that future developments will satisfy the requirement are not sufficient.
- 2.11.6** The vendor fails to respond to the Department's request for information, documents or references.
- 2.11.7** The vendor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested in Section 4 of this RFP.
- 2.11.8** The vendor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.
- 2.11.9** The vendor initiates unauthorized contact regarding the RFP with state employees.
- 2.11.10** The vendor provides misleading or inaccurate responses.

2.12 Nonmaterial and Material Variances

The Department reserves the right to waive or permit cure of nonmaterial variances in the bid proposal if, in the judgment of the Department, it is in the Department's best interest to do so. Nonmaterial variances include minor informalities that do not affect responsiveness; that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other vendors; that do not change the meaning or scope of the RFP; or that do not reflect a material change in the services. In the event the Department waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP specifications or other contract requirements if the vendor is awarded the contract. The determination of materiality is in the sole discretion of the Department.

2.13 Reference Checks

The Department reserves the right to contact any reference to assist in the evaluation of the bid proposal, to verify information contained in the bid proposal and to discuss the vendor's qualifications and the qualifications of any subcontractor identified in the bid proposal.

2.14 Information from Other Sources

The Department reserves the right to obtain and consider information from other sources concerning a vendor, such as the vendor's capability and performance under other contracts.

2.15 Verification of Bid Proposal Contents

The content of a bid proposal submitted by a vendor is subject to verification. Misleading or inaccurate responses shall result in disqualification.

2.16 Bid Proposal Clarification Process

The Department reserves the right to contact a vendor after the submission of bid proposals for the purpose of clarifying a bid proposal to ensure mutual understanding. This contact may include written questions, interviews, site visits, a review of past performance if the vendor has provided goods or services to the Department or any other political subdivision wherever located, or requests for corrective pages in the vendor's bid proposal. The Department will not consider information received if the information materially alters the content of the bid proposal or alters the type of goods and services the vendor is offering to the Department. An individual authorized to legally bind the vendor shall sign responses to any request for clarification. Responses shall be submitted to the Department within the time specified in the Department's request. Failure to comply with requests for additional information may result in rejection of the bid proposal as non-compliant.

2.17 Public Records and Requests for Confidential Treatment

The Department may treat all information submitted by a vendor as public information following the conclusion of the selection process unless the vendor properly requests that information be treated as confidential at the time of submitting the bid proposal. Iowa Code Chapter 22 governs the Department's release of information. Vendors are encouraged to familiarize themselves with Chapter 22 before submitting a proposal. The Department will copy public records as required to comply with the public records laws.

Any request for confidential treatment of information must be included in the transmittal letter with the vendor's bid proposal. In addition, the vendor must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law, which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the vendor to respond to any inquiries by the Department concerning the confidential status of the materials.

Any bid proposal submitted which contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Identification of the entire bid proposal as confidential may be deemed non-responsive and disqualify the vendor.

If the vendor designates any portion of the RFP as confidential, the vendor must submit one copy of the bid proposal from which the confidential information has been excised. This excised copy is in addition to the number of copies requested in Section 4 of this RFP. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.

The Department will treat the information marked confidential as confidential information to the extent such information is determined confidential under Iowa Code Chapter 22 or other applicable law by a court of competent jurisdiction.

In the event the Department receives a request for information marked confidential, written notice shall be given to the vendor seven calendar days prior to the release of the information to allow the vendor to seek injunctive relief pursuant to Section 22.8 of the Iowa Code.

The vendor's failure to request confidential treatment of material will be deemed by the Department as a waiver of any right to confidentiality which the vendor may have had.

2.18 Copyrights

By submitting a bid proposal, the vendor agrees that the Department may copy the bid proposal for purposes of facilitating the evaluation of the bid proposal or to respond to requests for public records. The vendor consents to such copying by submitting a bid proposal and warrants that such copying will not violate the rights of any third party. The Department shall have the right to use ideas or adaptations of ideas that are presented in the bid proposals.

2.19 Release of Claims

By submitting a bid proposal, the vendor agrees that it will not bring any claim or cause of action against the Department based on any misunderstanding concerning the information provided herein or concerning the Department's failure, negligent or otherwise, to provide the vendor with pertinent information as intended by this RFP.

2.20 Presentations

Vendors may be required to make a presentation of the bid proposal. The presentation may occur at the Department's offices or at the offices of the vendor. The determination as to need for presentations, the location, order, and schedule of the presentations is at the sole discretion of the Department. The presentation may include slides, graphics and other media selected by the vendor to illustrate the vendor's bid proposal. The presentation shall not materially change the information contained in the bid proposal.

2.21 Evaluation of Bid Proposals Submitted

Bid proposals that are timely submitted and are not subject to disqualification will be reviewed in accordance with Section 5 of the RFP. The Department will not necessarily award any contract resulting from this RFP to the vendor offering the lowest cost to the Department. Instead, the Department will award the contract to the compliant vendor whose proposal receives the most points in accordance with the evaluation criteria set forth in Section 5 of this RFP and subject to approval of the Iowa Department of Natural Resources Environmental Protection Commission.

2.22 Award Notice and Acceptance Period

Notice of intent to award the contract will be sent by mail to all vendors submitting a timely bid proposal. Negotiation and execution of the contract shall be completed no later than the date listed in Section 2.4, Procurement Timetable. If the apparent successful vendor fails to negotiate and deliver an executed contract by this date, the Department may cancel the award and award the contract to the next highest ranked vendor.

2.23 Definition of Contract

The full execution of a written contract shall constitute the making of a contract for services and no vendor shall acquire any legal or equitable rights relative to the contract services until the contract has been fully executed by the successful vendor and the Department.

2.24 Choice of Law and Forum

This RFP and the resulting contract are to be governed by the laws of the State of Iowa. Changes in applicable laws and rules may affect the award process or the resulting contract. Vendors are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought in the appropriate Iowa forum.

2.25 Restrictions on Gifts and Activities

Iowa Code Chapter 68B restricts gifts which may be given or received by state employees and requires certain individuals to disclose information concerning their activities with state government. Vendors are responsible to determine the applicability of this Chapter to their activities and to comply with the requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

Section 3 Scope of Services

3.1 Qualifications of Contractor

Survey data shall be certified by a land surveyor licensed in the State of Iowa or a professional engineer licensed in the State of Iowa.

Dam breach analysis work shall be certified by a professional engineer licensed in the State of Iowa.

3.2 Geographic and Geometric Information Gathering

3.2.1 The contractor shall obtain geographic and geometric information for the area downstream of the dam that will be affected by a dam failure.

- Cross sections of the flood plain shall be cut from USGS topographic maps (10' contour interval) at an interval not to exceed 1000 feet and at any natural hydraulic control point. Cross sections at control points such as bridges and roads, and leveed areas must be obtained by field survey. Precision of the field survey need be no closer than 0.1 feet vertical and 1.0 feet horizontal.
- Road and stream crossing data must include a road profile and the geometry of the bridge or culvert.
- Information for all affected downstream houses, buildings or other structures must be obtained by field survey. That information shall include the location of the structure, first floor elevation, foundation information (basement, slab on grade, crawl space, etc.), general building type (ranch, two story, pole building, etc.) and building use, if other than a single family home.

3.2.2 The contractor shall confirm basic information about the dam in order to confirm data from department files and to assure that the dam information and downstream cross sections are on the same reference datum.

- Dam information shall include the principal spillway type, size, and its inlet and outlet elevations; the bottom width of the emergency spillway and the elevation of the control section; the elevation of the top of the dam embankment and elevation of the streambed at the downstream toe of the dam. The survey datum

must be in NGVD 1929 or NAVD 88 and that datum must be indicated on the submittals.

3.2.3 Deliverables

The Contractor shall provide, in both paper and electronic (on compact disc) forms, a summary report of the survey work, certified by a land surveyor licensed in the State of Iowa or a professional engineer licensed in the State of Iowa and containing the following:

- To-scale work maps showing the dam, location of each cross section and the location of all houses, buildings or other structure in the flood plain within the project reach. Elevation and station coordinates must be provided for each cross section.
- A table of all houses, buildings or other structures determined to be in the dam breach flood zone must be provided for each breach analysis. The listing for each structure must include: the UTM coordinates, type of structure, foundation type, lowest floor elevation, low adjacent grade elevation and building use information.

3.3 Hydraulic Modeling

3.3.1 The contractor shall perform hydraulic modeling, which must include establishing basin hydrology. The Iowa DNR shall provide the contractor with basic watershed information, including: drainage area, originally computed runoff curve number and time of concentration, stage-storage data for the impoundment, the current presumed hazard classification for the dam and a set of plans for the dam. In addition, that same information will be provided for any dam in the upstream watershed that should be taken into consideration in developing the basin hydrology for the dam under review.

3.3.2 The contractor shall develop the probable maximum flood (PMF) once the basin hydrology has been established and when applicable, the maximum inflow design flood (maximum flow just prior to the dam overtopping) where the Department deems necessary. The contractor shall determine the dam breach parameters so a breach outflow hydrograph can be developed and that resultant hydrograph routed downstream through the area of concern.

The contractor shall analyze three separate scenarios:

- i) "Sunny day" failure scenario, for dam failure by internal erosion (piping) while the impoundment level is at the principal spillway crest.
- ii) For dams currently classified as having high damage potential, the contractor shall develop the probable maximum flood (PMF). The breach analysis shall be developed at the maximum potential water surface elevation and routed downstream through the area of concern. The PMF shall be run assuming no dam in place and an incremental damage assessment made.
- iii) For dams currently classified as having either low or moderate damage potential, an analysis shall be made to determine the critical flood, either the probable maximum flood or the inflow design flood (the flood which fills the impoundment to the point of

overtopping). A failure analysis shall be undertaken assuming the dam fails at the maximum inflow design flood (IDF). The IDF must be routed downstream through the area of concern. An IDF flood assuming no dam in place must also be undertaken and an incremental damage assessment made. If the IDF does not indicate incremental damage, this becomes the critical flood and no further analysis is needed. If the IDF dam failure flood routing indicates incremental damage, the PMF would become the critical flood. The PMF must then be developed and routed through the area of concern assuming a dam failure scenario and a no dam scenario.

The dam breach hydrograph must be developed using BREACH, HEC-HMS or HEC-RAS (unsteady flow) or DAMBRK software programs or an approved equal. Flood routings must be performed using HEC-RAS (unsteady flow), FLDWAV and DAMBRK.

3.3.3 Deliverables The contractor shall provide, in both paper and electronic (on compact disc) forms, a breach analysis summary report certified by a professional engineer licensed in the State of Iowa and containing the following:

- Input and output data tables for each of the above-described scenarios.
- Breach inundation mapping for both the sunny day failure and either the IDF breach or PMF breach whichever was determined to be the critical flood. The mapping must be based on 2002 infrared aerial photos with contour lines from USGS topographic map superimposed. Other base maps may be used if approved by the department. The map scale shall be no smaller than 1:24,000 for rural settings and 1:12,000 for urban settings.

3.4 List of Dams for Analysis

The RFP has been broken down into two sets of dams. The first set is a group of four dams (dam numbers 1 through 4 on the following list) which should be bid on as a lump sum, with costs categorized by deliverable. The second group of dams (dam numbers 5 through 10) should be bid per dam. Based on available funding, any or all of the dams in the second group of dams may be included in the contract.

1. Lake Anita Dam – NE1/4 Section 32, T77N, R34W, Cass County
2. Lake Sundown Dam – SE1/4 Section 29, T70N, R16W, Appanoose County
3. Leisure Lake Dam – NE1/4 Section 30, T86N, R2E, Jackson County
4. Woodland Lakes Estates Dam – NE1/4 Section 7, T80N, R22W, Polk County
5. Marion County Roadgrade Dam – SW1/4 Section 17, T76N, R18W, Marion County
6. Lake Ponderosa Dam – NW1/4 Section 10, T78N, R15W, Poweshiek County
7. Anderson Dam – SW1/4, SW1/4 Section 27, T78N, R27W, Dallas County
8. Van Buren Dam – SW1/4, SE1/4 Section 28, T78N, R27W, Dallas County
9. Izaak Walton League Dam – SW1/4 Section 21, T72N, R13W, Wapello County
10. Findley 1 Dam – SE1/4 Section 3, T79N, R25W, Polk County

3.5 Contract Deliverable Summary and Time Frames

The Contractor shall provide time frames for each contract deliverable.

Section 4 Format and Content of Bid Proposals

4.1 Instructions

These instructions prescribe the format and content of the bid proposal. They are designed to facilitate a uniform review process. Failure to adhere to the proposal format may result in the disqualification of the bid proposal.

- 4.1.1** The bid proposal shall be typewritten or printed on 8.5" x 11" paper (one side only).
- 4.1.2** The bid proposal shall be divided into two parts: (1) the Technical Proposal and (2) the Cost Proposal. The envelope, containing both the Technical and the Cost Proposals, shall be labeled with the following information:

Dave Allen, Issuing Officer
Iowa Department of Natural Resources
Water Quality Bureau
502 E9th St.
Des Moines, IA 50319

- 4.1.3** One (1) original and four (4) copies of the bid proposal shall be timely submitted to the Issuing Officer.
- 4.1.4** If the vendor designates any information in its proposal as confidential pursuant to section 2.18, the vendor must also submit one (1) copy of the bid proposal from which confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.
- 4.1.5** Attachments shall be referenced in the bid proposal.
- 4.1.6** If a vendor proposes more than one method of meeting these requirements, each should be labeled and submitted separately. Each will be evaluated separately.

4.2 Technical Proposal

The following documents and responses shall be included in the bid proposal in the order given below:

4.2.1 Transmittal Letter

An individual authorized to legally bind the vendor shall sign the transmittal letter. The letter shall include the vendor's mailing address, electronic mail address, fax number, and telephone number.

Any request for confidential treatment of information shall be included in the transmittal letter in addition to the specific statutory basis supporting the request and an explanation why disclosure of the information is not in the best interest of the public. The transmittal letter shall also contain the name, address and telephone number of the individual authorized to respond to the Department about the confidential nature of the information.

4.2.2 Table of contents

The vendor shall include a table of contents of its bid proposal.

4.2.3 Executive Summary

The vendor shall prepare an executive summary and overview of the services it is offering, including all of the following information:

4.2.3.1 Statements that demonstrate that the vendor understands and agrees with the terms and conditions of the RFP and the proposed contract.

4.2.3.2 A vision and mission statement for this program.

4.2.4 Service Requirements

The vendor shall address each service requirement in Section 3 [Scope of Services] of the RFP and explain how it plans to approach each requirement. Proposals must be fully responsive to service requirements. Merely repeating the requirements will be considered non-responsive and may disqualify the vendor. Proposals must identify any deviations from the requirements of this RFP or requirements the vendor cannot satisfy. Any deviations from the requirements of the RFP or any requirement of the RFP that the vendor cannot satisfy may disqualify the vendor.

4.2.5 Background Information

The vendor shall provide the following general background information:

4.2.5.1 Name, address, telephone number, fax number and e-mail address of the vendor including all d/b/a's or assumed names or other operating names of the vendor.

4.2.5.2 Form of business entity, i.e., corporation, partnership, proprietorship, limited liability company.

4.2.5.3 State of incorporation, state of formation, or state of organization.

4.2.5.4 Identity and specify the location(s) and telephone numbers of the major offices and other facilities that relate to the vendor's performance under the terms of this RFP.

4.2.5.5 Local address and phone number (if any)

4.2.5.6 Number of employees.

4.2.5.7 Type of business.

4.2.5.8 Name, address and telephone number of the vendor's representative to contact regarding all contractual and technical matters concerning this proposal.

4.2.5.9 Name, address and telephone number of the vendor's representative to contact regarding scheduling and other arrangements.

4.2.5.10 Name and qualifications of any subcontractors who will be involved with this project.

4.2.5.11 Identify the vendor's accounting firm.

4.2.5.12 The successful vendor will be required to register to do business in Iowa. If already registered, provide the date of the vendor's registration to do business in Iowa and the name of the vendor's registered agent.

4.2.6 Experience

The vendor must provide the following information regarding its experience:

4.2.6.1 Number of years in business.

4.2.6.2 Number of years' experience with providing the types of services sought by the RFP.

4.2.6.3 Describe the level of technical experience in providing the types of services sought by the RFP.

4.2.6.4 List all services similar to those sought by this RFP that the vendor has provided to other businesses or governmental entities.

- 4.2.6.5 Letters of reference from three (3) previous clients knowledgeable of the vendor's performance in providing services very similar to the services described in this RFP and a contact person and telephone number for each reference.

4.2.7 Personnel

The vendor must provide resumes for all key personnel, including the project manager, who will be involved in providing the services contemplated by this RFP. The following information must be included in the resumes:

- 4.2.7.1 Full name.
- 4.2.7.2 Education.
- 4.2.7.3 Years of experience and employment history particularly as it relates to the scope of services specified herein.
- 4.2.7.4 If key personnel are replaced for any reason, replacement personnel shall hold similar credentials to the person that they are replacing. Prior departmental approval is required for the replacement of key personnel.

4.2.8 Terminations, Litigation, Debarment

The vendor must provide the following information:

- 4.2.8.1 During the last five (5) years, has the vendor had a contract for services terminated for any reason? If so, provide full details related to the termination.
- 4.2.8.2 During the last five (5) years, describe any damages or penalties of anything of value traded or given up by the vendor under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP and the resulting Contract. If so, indicate the reason for the penalty or exchange of property or services and the estimated account of the cost of that incident to the vendor.
- 4.2.8.3 During the last five (5) years, describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the vendor to engage in any business, practice or activity.
- 4.2.8.4 During the last five (5) years, list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could affect the ability of the vendor to perform the required services. The vendor must also state whether it or any owners, officers, or primary partners have ever been convicted of a felony. Failure to disclose these matters may result in rejection of the bid proposal or in termination of any subsequent contract. This is a continuing disclosure requirement. Any such matter commencing after submission of a bid proposal, and with respect to the successful vendor after the execution of a contract, must be disclosed in a timely manner in a written statement to the Department.
- 4.2.8.5 During the last five (5) years, have any irregularities been discovered in any of the accounts maintained by the vendor on behalf of others? If so, describe the circumstances of irregularities or variances and disposition of resolving the irregularities or variances.

4.2.9 Proposal Certification

The vendor shall sign and submit with the bid proposal the document included as Attachment #2 in which the vendor shall certify that the contents of the bid proposal are true and accurate.

4.2.10 Acceptance of Terms and Conditions

The vendor shall specifically agree that the bid proposal is predicated upon the acceptance of all terms and conditions stated in the RFP. If the vendor objects to any term or condition, the vendor must specifically refer to the RFP page, and section. Objections or responses that materially alter the RFP may be deemed non-responsive and disqualify the vendor.

4.2.11 Certification of Independence and No Conflict of Interest

The vendor shall sign and submit with the bid proposal the document included as Attachment #3 in which the vendor shall certify that it developed the bid proposal independently. The vendor shall also certify that no relationship exists or will exist during the contract period between the vendor and the Department that interferes with fair competition or is a conflict of interest. The Department reserves the right to reject a bid proposal or cancel the award if, in its sole discretion, any relationship exists that could interfere with fair competition or conflict with the interests of the Department.

4.2.12 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

The vendor shall sign and submit with the bid proposal the document included as Attachment # 4 in which the vendor shall certify that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, department or agency.

4.2.13 Authorization to Release Information

The vendor shall sign and submit with the bid proposal the document included as Attachment #5 in which the vendor authorizes the release of information to the Department.

4.2.14 Firm Bid Proposal Terms

The vendor shall guarantee in writing the availability of the services offered and that all bid proposal terms, including price, will remain firm a minimum of ninety (90) days following the deadline for submitting proposals.

4.3 Cost Proposal

The vendor shall provide an itemized cost proposal for the proposed services.

The vendor shall break the cost proposal into two sets of dams. The first set is a group of four dams (dam numbers 1 through 4 on the following list) which should be bid on as a lump sum, with costs categorized by the deliverables. The second group of dams (dam numbers 5 through 10) should be bid per dam. Depending on the bids, any or all of the dams in the second group of dams may be included in the contract.

1. Lake Anita Dam – NE1/4 Section 32, T77N, R34W, Cass County
2. Lake Sundown Dam – SE1/4 Section 29, T70N, R16W, Appanoose County
3. Leisure Lake Dam – NE1/4 Section 30, T86N, R2E, Jackson County
4. Woodland Lakes Estates Dam – NE1/4 Section 7, T80N, R22W, Polk County
5. Marion County Roadgrade Dam – SW1/4 Section 17, T76N, R18W, Marion County
6. Lake Ponderosa Dam – NW1/4 Section 10, T78N, R15W, Poweshiek County
7. Anderson Dam – SW1/4, SW1/4 Section 27, T78N, R27W, Dallas County
8. Van Buren Dam – SW1/4, SE1/4 Section 28, T78N, R27W, Dallas County
9. Izaak Walton League Dam – SW1/4 Section 21, T72N, R13W, Wapello County
10. Findley 1 Dam – SE1/4 Section 3, T79N, R25W, Polk County

Section 5 Evaluation of Bid Proposals

5.1 Introduction

This section describes the evaluation process that will be used to determine which bid proposal provides the greatest benefits to the Department. The evaluation process is designed to award the contract not necessarily to the vendor of least cost, but rather to the vendor with the best combination of attributes to perform the required services.

5.2 Evaluation Committee

The Department intends to conduct a comprehensive, fair and impartial evaluation of bid proposals received in response to this RFP. The Department will use an Evaluation Committee to review and evaluate the proposals.

5.3 Evaluation Criteria

The Evaluation Committee will evaluate all proposals and make an award made using the following criteria, which are listed in no particular order.

| | |
|---|-----|
| Scope of Work | 40% |
| Project Cost | 25% |
| Reporting and Time Frames | 20% |
| Evaluation Committee's Judgment of the Proposal | 15% |

The Department may request clarification of any proposal at any time after the initial evaluation. This request may include an interview and a presentation of the proposal to the evaluation committee.

Section 6 Contract Terms and Conditions

6.1 Contract Terms and Conditions

The contract that the Department expects to award as a result of this Request for Proposal will be based upon the bid proposal submitted by the successful vendor and this solicitation. The contract between the Department and the successful vendor shall be a combination of the specifications, terms and conditions of the Request for Proposal, including the terms contained in the offer of the vendor contained in the technical and cost proposals, written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by the Department.

The contract terms mentioned in this RFP are not intended to be a complete listing of all contract terms but are provided only to enable vendors to better evaluate the costs associative with the RFP and the potential resulting contract. Vendors should plan on such terms being included in any contract awarded as a result of this RFP. All costs associated with complying with these requirements should be included in the revenue proposal or any pricing quoted by the vendor.

Attachment 6 is a copy of the special conditions of the awarded contract and standard General Terms and Conditions that is attached to all contracts.

By submitting a proposal, each vendor acknowledges its acceptance of these specifications, terms and conditions without change except as otherwise expressly stated in its proposal. If a vendor takes exception to a provision, it must state the reason for the exception and set forth in

its proposal the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the RFP may be deemed non-responsive by the Department, in its sole discretion, resulting in possible disqualification of the proposal. The Department reserves the right to either award a contract without further negotiation with the successful vendor or to negotiate contract terms with the selected vendor if the best interests of the Department would be served.

6.2 Contract Length

The term of the contract will be from approximately September 1, 2006 through August 31, 2008.

Attachment 1

Request For Proposal #2007-7132-01, Dam Breach Analysis Mandatory Notice Of Intent To Bid Form

If you are considering or intend to submit a proposal for the Iowa Department of Natural Resources, Water Supply Operations Section, you **must complete the section below and return this form** on or before Thursday, June 15, 2006.

The Intent to Bid Form does not obligate the vendor to submit a proposal. However, it does protect the vendor's right to submit a proposal.

Send to: Dave Allen, Issuing Officer
Iowa Department of Natural Resources
Water Quality Bureau
502 E 9th St.
Des Moines, IA 50319

Iowa Department of Natural Resources
Water Quality Bureau
Dam Breach Analysis RFP

| | |
|---|--|
| Submitted by: | |
| Firm Name: | |
| Address: | |
| City, State, Zip: | |
| Telephone: | |
| Fax: | |
| E-mail Address: | |
| Signed: | |
| Print Name: | |
| Title: | |
| Date: | |
| Is this business listed as a targeted small business? | |

Attachment 2

[Date]

Dave Allen, Issuing Officer
Iowa Department of Natural Resources
Water Quality Bureau
502 E 9th St.
Des Moines, IA 50319

Re: Request for Proposal #2007-7132-01, Dam Breach Analysis
Proposal Certification

Dear Mr. Allen:

I certify that the contents of the proposal submitted on behalf of [Name of Vendor] in response to Iowa Department of Natural Resources RFP #2007-7132-01, Dam Breach Analysis are true and accurate.

I also certify that [Name of Vendor] has not made any knowingly false statement in its proposal.

Sincerely,

[Name and Title]

Attachment 3

[Date]

Dave Allen, Issuing Officer
Iowa Department of Natural Resources
Water Quality Bureau
502 E 9th St.
Des Moines, IA 50319

Re: Request for Proposal #2007-7132-01, Dam Breach Analysis
Certification of Independence and No Conflict of Interest

Dear Mr. Allen:

By submitting a proposal in response to Iowa Department of Natural Resources Request for Proposal #2007-7132-01, Dam Breach Analysis, the undersigned certifies the following;

1. The proposal has been developed independently, without consultation, communication or agreement with any employee or consultant to the Department who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee.
2. The proposal has been developed independently, without consultation, communication or agreement with any other vendor or parties for the purpose of restricting competition.
3. Unless otherwise required by law, the information found in the proposal has not been knowingly disclosed and will not be knowingly disclosed prior to the award of the contract, directly or indirectly, to any other vendor.
4. No attempt has been made or will be made by [Name of Vendor] to induce any other vendor to submit or not to submit a proposal for the purpose restricting competition.
5. No relationship exists or will exist during the contract period between [Name of Vendor] and the Department that interferes with fair competition or as a conflict of interest.

Sincerely,

[Name and Title]

Attachment 4

[Date]

Dave Allen, Issuing Officer
Iowa Department of Natural Resources
Water Quality Bureau
502 E 9th St.
Des Moines, IA 50319

Re: Request for Proposal Number #2007-7132-01, Dam Breach Analysis
Certification Regarding Debarment, Suspension, Eligibility, and Voluntary Exclusion

Dear Mr. Allen:

By submitting a proposal in response to the Department of Natural Resources Request for Proposal Number #2007-7132-01, Dam Breach Analysis, the undersigned certifies the following:

1. I certify that, to the best of my knowledge, [Name of Vendor] and all of its principles: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or agency; (b) have not within a three year period preceding this proposal been convicted of, or had a civil judgment rendered against them for commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are not presently indicted for or other criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this proposal had one or more public transactions (federal, state, or local) terminated for cause.
2. This certification is a material representation of fact upon which the Department has relied upon when this transaction was entered into. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available, the Department may pursue available remedies including suspension, debarment, or termination of the contract.

Sincerely,

[Name and Title]

Attachment 5

[Date]

Dave Allen, Issuing Officer
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319

Re: Request for Proposal Number #2007-7132-01, Dam Breach Analysis
Authorization to Release Information

Dear Mr. Allen:

[Name of Vendor] hereby authorizes the Iowa Department of Natural Resources to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful vendor in response to Request for Proposal Number 2007-7132-01.

The vendor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The vendor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the Department or may otherwise hurt its reputation or operations. The vendor is willing to take that risk.

The vendor hereby releases, acquits and forever discharges the State of Iowa, the Department, their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references obtained by the Department in the evaluation and selection of a successful vendor in response to Request for Proposal Number 2007-7132-01.

The vendor authorizes representatives of the Department to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the undersigned's performance under any contract, agreement, or other business arrangement, the undersigned's ability to perform the undersigned's business reputation, and any other matter pertinent to the evaluation of the undersigned. The undersigned hereby releases, acquits and forever discharges any such person or entity and their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or every claim to have relating to information, data, opinions, and references supplied to the Department in the evaluation and selection of a successful vendor in response to Request for Proposal 2007-7132-01.

A photocopy or facsimile of this signed Authorization is as valid as an original.

Sincerely,

[Printed Name of Vendor Organization]

[Name and Title of Authorized Representative]

[Date of Signature]

Attachment 6

2007-7132-01, Dam Breach Analysis
Terms and Conditions of the Contract

**IOWA DEPARTMENT OF NATURAL RESOURCES
AGREEMENT
WITH
CONTRACTOR**

Agreement Title: Dam Breach Analysis

Agreement Amount:

Time of Performance: September 1, 2006 – August 31, 2008

Contractor

Department of Natural Resources

Project Officer:

Project Officer: Dave Allen

Submit Original Invoice to:

Iowa Department of Natural Resources
Attn. Dave Allen
502 E 9th St.
Wallace Office Building
Des Moines, IA 50319

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the Agreement and have caused their duly authorized representatives to execute this Agreement.

Iowa Department of Natural Resources

Contractor

By: Liz Christiansen, Deputy Director

By:

Date: _____

Date: _____

SERVICES CONTRACT

This Agreement for the Dam Breach Analysis: Survey Data (this "Agreement"), made and effective as of September 1, 2006, by and between the Iowa Department of Natural Resources, ("Department") and Contractor, a corporation organized under the laws of Iowa and authorized to do business in Iowa ("Vendor"). The parties agree as follows:

Section 1. Purpose. The parties have entered into this Agreement for the purpose of retaining Vendor to provide professional services and other deliverables in gathering survey data to be used in a Dam Breach Analysis for the Department and the State of Iowa (the "State").

Section 2. Definitions.

2.1 "Acceptance" means that the Department has determined that one or more Deliverables satisfy the Department's Acceptance Tests. Final Acceptance means that the Department has determined that all Deliverables satisfy the Department's Acceptance Tests. Non-acceptance means that the Department has determined that one or more Deliverables have not satisfied the Department's Acceptance Tests.

2.2 "Acceptance Criteria" means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Department and against which the Deliverables shall be evaluated for purposes of Acceptance or Non-acceptance thereof.

2.3 "Acceptance Tests" or "Acceptance Testing" mean the tests, reviews and other activities that are performed by or on behalf of the Department to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Department, as determined by the Department in its sole discretion. Acceptance Testing may include unit testing to check individual components, system testing on an integrated basis, user-acceptance testing, stress testing, and Documentation review.

2.4 "Confidential Information" means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a "disclosing party") to the other party (a "receiving party") that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the information by the disclosing party to the receiving party; (ii) was known to the receiving party prior to the disclosure of the information by the disclosing party; (iii) was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the receiving party in violation of this Agreement or in breach of any other agreement with the disclosing party; (v) is independently developed by the receiving party without any reliance on Confidential Information disclosed by the disclosing party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the receiving party with the written consent of the disclosing party.

2.5 “Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a Deliverable to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

2.6 “Deliverables” mean the services, Software, goods and materials to be provided by Vendor to the Department under this Agreement. Unless otherwise expressly provided in this Agreement, Deliverables shall include any and all Documentation, designs, copy, artwork, data, information, graphics, images, templates, screen designs, processes, inventions, techniques, methodologies, materials, plans, papers, forms, reports, studies, source code, object code, utilities and routines, devices, modifications, content, concepts, and all other tangible and intangible works, materials and property of every kind and nature related to the Deliverables or otherwise produced or provided by Vendor in connection with this Agreement.

2.7 “Documentation” means any and all technical information, commentary, design documents, code and test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables.

2.8 “Project” means the project to develop the Iowa Stormwater Conference 2006 and all services and Deliverables to be performed and provided by Vendor as described in this Agreement.

2.9 “Project Completion Date” means the date by which Vendor must complete all work and provide all Deliverables pursuant to this Agreement. For purposes of this Agreement, the Project Completion Date is August 31, 2008.

2.10 “Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Agreement, Documentation, the RFP (as defined below), and the Proposal (as defined below). Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

2.11 “Statement of Work” means Schedule A to this Agreement, which describes, among other things, the Deliverables and services to be provided by Vendor under this Agreement. The Statement of Work is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

2.13 “Third Party” means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

Section 3. Entire Agreement

3.1 Entire Agreement. This Contract with all attachments and references constitutes the entire Agreement between the Department and the Contractor with respect to the subject matter hereof, and the Contractor acknowledges that it is entering into the Contract solely on the basis

of the terms and conditions herein contained and not in reliance upon any representative statement, inducement or promise, whether oral or written, not contained herein.

Section 4. Scope of Work.

4.1 Scope of Work. Vendor shall provide the Department with the Deliverables in accordance with the Statement of Work (Schedule A) and all other terms and conditions of this Agreement.

4.2 Amendments to Statement of Work. The parties agree that the Statement of Work may be amended, modified, or replaced at any time during the term of this Agreement upon the mutual written consent of the parties.

Section 5. Compensation and Additional Rights and Remedies.

5.1 Compensation. In consideration of Vendor providing the Department with the Deliverables in accordance with the terms and conditions of this Agreement, Vendor shall be entitled to receive the fees or other compensation associated with such Deliverables as specified in Schedule A, subject to all terms and conditions of this Agreement, including, without limitation Section 5.2 (Invoices). The Department shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement. All fees and compensation payable hereunder to Vendor are fixed, not-to-exceed amounts, and Vendor shall not be compensated on a time and materials basis. It is expressly understood and agreed that in no event will the total fees or compensation to be paid hereunder exceed the sum of \$. Vendor is not entitled to payment for any Deliverables provided under this Agreement if the Department reasonably determines that any Deliverables or services have not been satisfactorily or completely delivered or performed, or that any Deliverable fails to meet or conform to any applicable Specifications. No payment, including final payment, shall be construed as acceptance of any Deliverables with Deficiencies or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the Department shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the Department or the State. No advance payments shall be made for any Deliverables provided by Vendor pursuant to this Agreement.

5.2 Invoices. Upon receipt of Acceptance from the Department with respect to one or more Deliverables, Vendor shall submit an invoice to the Department requesting payment of the fees or other compensation associated with such Deliverable(s). All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Department. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Department may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Department shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Department believes the invoice is inaccurate or incorrect in any way.

5.3 Erroneous Payments and Credits. Vendor shall promptly pay or refund to the Department the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the Department of the overpayment or

erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Department under this section 5.4, the Department will charge interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Department may, in its sole discretion, elect to have Vendor apply any amounts due to the Department under this Section 5.4 against any amounts payable by the Department under this Agreement.

5.4 Reimbursable Expenses. There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Vendor.

5.5 Set-off Against Sums Owed by Vendor. In the event that Vendor owes the Department or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Department may set off such sum against any sum invoiced to the Department by Vendor in the Department's sole discretion unless otherwise required by law. Amounts due to the Department as liquidated damages or any other damages may be deducted by the Department without a judgment or any court action from any money or sum payable by the Department to Vendor pursuant to this Agreement or any other agreement between Vendor and the Department.

5.6 Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Department may withhold compensation or payments to Vendor, in whole or in part, without penalty to the Department or work stoppage by Vendor, in the event the Department determines that: (i) Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or (ii) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Department under this Agreement.

5.7 Correction/Cure. The Department may correct any Deficiencies with respect to any Deliverable or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from the Department. The Department may provide or procure the services reasonably necessary to correct any Deficiencies or cure any Vendor default, in which event Vendor shall reimburse the Department for the actual costs incurred by the Department for such services (or for the reasonable value of the time expended by any Department or State employees who provide such services). In addition, Vendor shall cooperate with the Department or any Third Parties retained by the Department who assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor.

5.8 Monitoring and Review. The Department shall monitor and review Vendor's performance under this Agreement to ensure compliance with this Agreement. Such review and monitoring shall include the Department's assessment of invoices and reports furnished by Vendor pursuant to this Agreement.

Section 6. Acceptance Tests, Project Management and Key Personnel.

6.1. Vendor shall commence and complete all work and provide all Deliverables in accordance with the deadlines, timelines, terms, conditions, Specifications and other requirements specified in this Agreement, including those which may be specified in the Statement of Work.

6.2 All Deliverables shall be subject to the Department's Acceptance Testing and Acceptance, unless otherwise specified in the Statement of Work. Upon completion of all work to be performed by Vendor with respect to any Deliverable, Vendor shall deliver a written notice to the Department certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Department to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Department. At the Department's request, Vendor shall assist the Department in performing Acceptance Tests at no additional cost to the Department. Within a reasonable period of time after the Department has completed its Acceptance Testing, the Department shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Department determines that a Deliverable satisfies its Acceptance Tests, the Department shall provide Vendor with notice of Acceptance with respect to such Deliverable. If the Department determines that a Deliverable fails to satisfy its Acceptance Tests, the Department shall provide Vendor with notice of Non-acceptance with respect to such Deliverable. In the event the Department provides notice of Non-acceptance to Vendor with respect to any Deliverable, Vendor shall correct and repair such Deliverable and submit it to the Department within ten (10) days of Vendor's receipt of notice of Non-acceptance so that the Department may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Department determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Vendor has attempted to correct or repair pursuant to this Section 6.2, that such Deliverable fails to satisfy its Acceptance Tests, then the Department shall have the continuing right, in its sole discretion to: (i) require Vendor to correct and repair such Deliverable within such period of time as the Department may specify in a written notice to Vendor, (ii) refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable); (iii) accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Department's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Department to correct such Deficiencies; or (iv) terminate this Agreement and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 10 of this Agreement, the Department may terminate this Agreement pursuant to this Section 6.2 without providing Vendor with any notice or opportunity to cure provided for in Section 10. The Department's right to exercise the foregoing rights and remedies, including termination of this Agreement, shall remain in effect until Acceptance Tests are successfully completed to the Department's satisfaction. If the Department determines that all Deliverables satisfy its Acceptance Tests, the Department shall provide Vendor with notice of Final Acceptance with respect to such Deliverables. Vendor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not constitute or be construed as a waiver of any of the Department's rights to enforce the terms of this Agreement or require performance in the event the Department identifies, at any time, any Deficiencies with respect to such Deliverable(s).

6.3 Project Management and Reporting.

6.3.1 Project Manager. At the time of execution of this Agreement, Vendor shall designate, in writing, a Project Manager acceptable to the Department to serve until the expiration of this Agreement. Vendor will assign a Project Manager of a management level sufficient to assure timely responses from all Vendor personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the Department prior to her or his appointment as Vendor's Project Manager. Vendor represents that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions pursuant to this Agreement on behalf of and for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her/him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at the Department's site as needed during the course of work under this Agreement and will be available either in person, by telephone or E-mail to respond promptly (in no event more than 24 hours after receipt of a request or inquiry from the Department) during the business day to inquiries from the Department.

6.3.2 Review Meetings. Commencing with performance of this Agreement, Vendor's Project Manager shall meet weekly with the Department's project manager and representatives, unless otherwise mutually agreed, to discuss progress made by the Vendor in the performance of this Agreement. Vendor's Project Manager shall provide a status report, listing any problem or concern encountered since the last meeting. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance under this Agreement.

6.3.3 Reports. At the next scheduled meeting after which any party has identified in writing a problem, the Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. At a minimum, reports prepared by Vendor's Project Manager shall describe the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, proposed changes to the Project Plan and any problems that may have arisen that need to be addressed before proceeding to the next activities. Vendor's proposed format and level of detail for its status reports shall be subject to the Department's approval.

6.3.4 Problem Reporting Omissions. The Department's receipt of acceptance of a problem report shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that the Department may have. The Department's failure to identify the extent of a problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance under this Agreement.

6.3.5 Change Order Procedure. The Department may at any time request a modification to the Statement of Work using a change order. The following procedures for a change order shall be followed:

6.3.5.1 Written Request. The Department shall specify in writing the desired modifications to the same degree of specificity as in the original Statement of Work.

6.3.5.2 Vendor's Response. Vendor shall submit to the Department a firm time and cost proposal and any proposed modifications to the Project Plan for the requested change order within five (5) business days of receiving the Department's change order request.

6.3.5.3 Acceptance of Vendor's Estimate. If the Department accepts Vendor's proposal, Vendor shall perform the modified services subject to the firm time and cost proposals included in Vendor's response and subject to the terms and conditions of this Agreement.

6.4 Key Personnel. The Department considers the personnel submitted in the Vendors proposal to be essential to a successful project. Vendor shall not remove, reassign or substitute the individual(s) identified in this section except in the event of death, illness, retirement, disability, or termination from employment, conditions permitting absence from employment under the Family and Medical Leave Act of 1993, or in the event of the Department's written consent. If at any time during the term of this Agreement, the Department becomes dissatisfied with the performance of any individual who is part of Vendor's personnel, the Department shall notify Vendor of the reasons for such dissatisfaction and may request the replacement of such individual. Vendor will promptly investigate such request and the reasons for such dissatisfaction and report back to the Department on the corrective action Vendor believes is appropriate to address the Department's concerns and dissatisfaction. If the parties determine that such individual needs to be replaced, the replacement shall be effected promptly with a substitute individual having equal or greater ability, experience and qualifications than the departing individual.

Section 7. Term. The term of this contract is for seven months with the Department having the option to extend the Agreement. The decision to extend the Agreement will be at the sole option of the Department. The term of the contract is from September 1, 2005 to March 31, 2006.

Section 8. Representations, Warranties and Covenants

8.1 Vendor agrees, within the standard of care, that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Agreement. During the term of this Agreement, Vendor shall repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications at no cost to the Department promptly upon receiving notice of such Deficiencies or failures from the Department. In the event Vendor is unable to repair, correct or replace such Deliverable to the Department's satisfaction, Vendor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Agreement, and the Department shall be entitled to pursue any other available contractual, legal or equitable remedy.

8.2 Vendor agrees, within the standard of care, that it is fully aware of the Department's business requirements and intended uses for the Deliverables as set forth in the RFP, and the Deliverables shall satisfy such requirements in all material respects and are fit for such intended

uses.

8.3 Vendor agrees, within the standard of care, that: (i) all Deliverables shall be wholly original with and prepared solely by Vendor; (ii) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the services and Deliverables to the Department hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Department hereunder without violating any rights of any Third Party; and (iii) the Department shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

8.4 Vendor agrees, within the standard of care, that: (i) the Deliverables (and all intellectual property rights therein and related thereto); and (ii) the Department's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights therein and related thereto), do not and shall not misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Vendor shall inform the Department in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Vendor shall, at the Department's request: (i) procure for the Department the right or license to continue to use the Deliverable at issue; (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (iii) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable at issue and refund to the Department all fees, charges and any other amounts paid by the Department under this Agreement with respect to such Deliverable. In addition, Vendor agrees to indemnify, defend, protect and hold harmless the Department and the State and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Department and shall survive termination of this Agreement.

8.5 Vendor agrees that the Deliverables and all intellectual property rights and proprietary rights therein or related thereto, shall become and remain the sole and exclusive property of the Department and the State. Vendor hereby irrevocably transfers, assigns and conveys to the Department and the State all right, title and interest in and to such Deliverables and all intellectual property rights and proprietary rights therein or related thereto. Vendor shall take all actions as may be necessary or requested by the Department to carry out and effect such transfer, assignment and conveyance. Vendor represents and warrants that the Department and the State shall acquire good and clear title to such Deliverables, free from any claims, liens, security interests, encumbrances or other rights or interests of Vendor or of any Third Party. The Department and the State shall have the right to obtain and hold copyrights, patents or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof. Vendor shall assist the Department and the State to obtain and secure copyrights, patents or other intellectual property rights, registrations or protections with respect to all such Deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to

transfer to the Department and the State all the right, title and interest in and to such Deliverables. Vendor also agrees to waive and not assert any moral rights it may have with regard to such Deliverables. The Vendor shall not retain any property interests or other rights in and to such Deliverables and shall not use such Deliverables, in whole or in part, for any purpose, without the prior written consent of the Department and the payment of such royalties or other compensation as the Department deems appropriate. As the owner of such Deliverables, the Department and the State may, without limitation: (i) adapt, change, modify, edit or use the Deliverables as the Department or the State sees fit, including in combination with the works of others, prepare derivative works based on the Deliverables, and publish, display and distribute throughout the world any Deliverable(s) in any medium, whether now known or later devised, including, without limitation, any digital or optical medium, and (ii) make, use, sell, license, sublicense, or lease the Deliverables and any intellectual property rights therein or related thereto without payment of additional compensation to Vendor.

8.6 All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.

8.7 Vendor agrees, within the standard of care, that all services to be performed under this Agreement shall be performed in a professional, competent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Department notifies Vendor of any services performed in violation of this standard, Vendor shall re-perform the services at no cost to the Department, such that the services are rendered in the above-specified manner, or if the Vendor is unable to perform the services as agreed, Vendor shall reimburse the Department any fees or compensation paid to Vendor for the unsatisfactory services.

8.8 Vendor agrees, within the standard of care, that it has complied with, and shall comply with, all applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in connection with its performance under this Agreement.

8.9 Vendor agrees, within the standard of care, that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

8.10 Vendor agrees, within the standard of care, that the Deliverables will comply with any applicable federal, state foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Agreement.

8.11 Vendor agrees, within the standard of care, that it will comply with and adhere to all Department and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and that Vendor will take all precautions necessary to prevent unauthorized access to the Department's and the State's systems, networks, computers, property, records, data, and information.

Section 9. Indemnification

9.1 By the Vendor. The Vendor agrees to indemnify and hold harmless the State of Iowa and the Department, its officers, employees and agents appointed and elected and volunteers from costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the Department, related to or arising from:

9.1.1 Any breach of this Contract by the Vendor;

9.1.2 Any negligent, intentional or wrongful act or omission of the Vendor or any agent or subcontractor utilized or employed by the Vendor;

9.1.3 The Vendor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Vendor;

9.1.4 Any failure by the Vendor to comply with lawful provisions of this Contract;

9.1.5 Any failure by the Vendor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State of Iowa;

9.1.6 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right by the Vendor; or

9.1.7 Any failure by the Vendor to adhere to the confidentiality provisions of this Contract.

9.2 Indemnification by the Department

9.2.1 The Department shall, only to the extent consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, indemnify and hold harmless the Vendor from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising directly out of the negligence or wrongful acts or omissions of any employee of the Department while acting within the scope of the employee's office of employment in connection with the performance of this Contract.

9.2.2 At the discretion of the Department, the Vendor shall be represented by the Attorney General of the State or special counsel retained by the State or the Attorney General of the State with respect to any litigation brought by or against the Department or such persons with respect to any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments to which such persons may be subject and to which they are entitled to be indemnified hereunder.

- 9.2.3** If the Department makes any indemnity payments pursuant to this Section and the person to or on behalf of whom such payments are made thereafter collects any of such amounts from others, that person shall promptly repay such amounts to the Department, without interest.

9.3 Survives Termination. Indemnification obligation of the parties shall survive termination of this Contract.

Section 10. Default and Termination.

10.1 Termination for Cause by the Department. The Department may terminate this Agreement upon written notice for the breach by Vendor of any material term, condition or provision of this Agreement, if such breach is not cured within the time period specified in the Department's notice of breach or any subsequent notice or correspondence delivered by the Department to Vendor, provided that cure is feasible. Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for liquidated damages. In addition, the Department may terminate this Agreement effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

10.1.1 Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;

10.1.2 Vendor or any of Vendor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

10.1.3 Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;

10.1.4 Vendor terminates or suspends its business;

10.1.5 Vendor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited;

10.1.6 Vendor has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement;

10.1.7 The Department determines or believes the Vendor has engaged in conduct that has or may expose the Department or the State to material liability;

10.1.8 Vendor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Vendor misappropriates or allegedly misappropriates a trade secret; or

10.1.9 Any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

10.1.9.1 Commencing or permitting a filing against it which isn't discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in

any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

10.1.9.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

10.1.9.3 Making an assignment for the benefit of creditors;

10.1.9.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement; or

10.1.9.5 Taking any action to authorize any of the foregoing.

The Department's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Department.

10.2 Termination for Convenience. Following thirty (30) days written notice, the Department may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to Vendor. Termination for convenience can be for any reason or no reason at all.

10.3 Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, the Department shall have the right to terminate this Agreement without penalty and without any advance notice as a result of any of the following:

10.3.1 The legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; or

10.3.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or

10.3.3 If the Department's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or

10.3.4 If the Department's duties, programs or responsibilities are modified or materially altered; or

10.3.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Department's ability to fulfill any of its obligations under this Agreement or the operation of the System.

The Department shall provide Vendor with written notice of termination pursuant to this section.

10.4 Limitation of the State's Payment Obligations. In the event of termination of this Agreement for any reason by either party (except for termination by the Department pursuant to

Section 10.1), the Department shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which Acceptance has been provided by the Department up to and including the date of termination of this Agreement and for which the Department is obligated to pay pursuant to this Agreement. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to the Department and shall not be construed to require the Department to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts withheld by the Department in accordance with the terms of this Agreement. The Department shall not be liable, under any circumstances, for any of the following:

10.4.1 The payment of unemployment compensation to Vendor's employees;

10.4.2 The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

10.4.3 Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement;

10.4.4 Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement;

10.4.5 Any taxes Vendor may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

10.5 Vendor's Termination Duties. Upon receipt of notice of termination or upon request of the Department, Vendor shall:

10.5.1 Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Department may require.

10.5.2 Immediately cease using and return to the Department any property (including, without limitation, Department Property) or materials, whether tangible or intangible, provided by the Department to Vendor.

10.5.3 Cooperate in good faith with the Department and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.

10.5.4 Immediately return to the Department any payments made by the Department for services or Deliverables that were not rendered or provided by Vendor.

10.6 Termination for Cause by Vendor. Vendor may only terminate this Agreement upon written notice for the breach by the Department of any material term, condition or provision of this Agreement, if such breach is not cured within sixty (60) days of the Department's receipt of Vendor's written notice of breach.

Section 11. Insurance.

11.1 Insurance Policies. Vendor shall maintain in full force and effect, with insurance companies of recognized responsibility, at its expense, insurance covering its work of the type and in amounts required by this Agreement. Vendor's insurance shall, among other things, insure against loss or damage resulting from Vendor's performance of this Agreement and shall

be subject to the approval of the Department. All such insurance policies shall remain in full force and effect for the entire term of this Agreement and shall not be canceled or changed without the Department's prior written consent.

Unless otherwise requested by the Department, Vendor shall, at its sole cost, cause to be issued and maintained in effect during the entire term of this Agreement not less than the insurance coverages set forth below each naming the Department and the State of Iowa as an additional insured or loss payee, as applicable:

Type of Insurance

| | | |
|---|----------------------------|-------------|
| General Liability (including contractual liability) written on an occurrence basis | General Aggregate | \$5 million |
| | Prod./Comp. | |
| | Aggregate | \$1 million |
| | Personal injury | \$1 million |
| Excess Liability, umbrella form | Each Occurrence | \$1 million |
| | Each Occurrence | \$1 million |
| | Aggregate | \$2 million |
| Errors and Omissions Insurance | Each Occurrence | \$2 million |
| Property Damage | Each Occurrence | \$1 million |
| | Aggregate | \$2 million |
| Workers Compensation and Employer Liability | As Required by Iowa law | |

11.2 Claims Provision. All insurance policies required by this Agreement must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

11.3 Certificates of Coverage. Certificates of the insurance described above shall be submitted to the Department within thirty (30) days after the effective date of this Agreement and shall be subject to approval by the Department. Vendor shall provide certificates for the coverage required. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days prior written notice to the Department.

11.4 No Limitation of Liability. Acceptance of the insurance certificates by the Department shall not act to relieve Vendor of any obligation under this Agreement. All insurance policies and certificates shall be issued only by companies authorized to transact business in the State of Iowa. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement.

11.5 Warranty. Vendor warrants that it has examined its insurance coverage to determine whether the Department and the State can be named as additional insureds without creating an adverse effect on Vendor's coverage.

11.6 Waiver of Subrogation Rights. Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Department or the State. The waiver of

subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Department.

Section 12. Contract Administration.

12.1 Independent Contractor. Vendor is an independent contractor performing services for the Department. Vendor shall not hold itself out as an employee or agent of the Department. The Department shall not provide Vendor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither Vendor nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Vendor and its staff shall not be considered employees of the Department or the State for any purpose, including for federal or State tax purposes. The Department shall not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

12.2 Compliance with the Law and Regulations.

12.2.1 Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Department of Management regarding equal employment. Vendor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 Iowa Admin. Code Chapter 4. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to Vendor's performance of this Agreement.

12.2.2 Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to the fulfillment or performance of this Agreement.

12.2.3 The Department may consider the failure of Vendor to comply with any law or regulation as a material breach of this Agreement.

12.3 Confidentiality. Vendor and its employees, agents, approved contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed, owned or maintained by the Department or the State ("Department Property") to the extent necessary to carry out its responsibilities under the Agreement. Such Department Property shall at all times remain the property of the Department and/or the State. Vendor shall preserve the confidentiality of Department Property disclosed or furnished by the Department to Vendor and shall maintain procedures for safeguarding such property. Vendor must designate one individual who shall remain the responsible authority in charge of all Department Property collected, used, or disseminated by

Vendor in connection with the performance of this Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents, and any approved contractors or subcontractors may be required by the Department to execute confidentiality or non-disclosure agreements to obtain access to certain Department Property. Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any Department Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by the Department to enable Vendor to perform its obligations under this Agreement and except as required by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Vendor agrees to return any and all Department Property received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of the Department. In the event that Vendor receives a request for access to any Department Property, Vendor shall immediately communicate such request to the Department for consideration and handling.

Vendor shall indemnify the Department, the State and all other Indemnitees in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, the Department may terminate this Agreement immediately without notice of default and opportunity to cure. Vendor's obligations under this section shall survive expiration or termination of this Agreement.

12.4 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement.

12.5 Third Party Rights. No person other than the parties hereto, their respective successors and permitted assigns, the State and Governmental Entities may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Department, the State, Governmental Entities and the Vendor.

12.6 Choice of Law and Forum.

12.6.1 This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof.

12.6.2 Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; and (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts.

12.6.3 This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Department or the State.

12.6.4 Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent.

The Vendor appoints [name], [address], as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the Department with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Department. Nothing in this provision will alter the right of the Department to serve process in any other manner permitted by law.

12.6.5 This Section 12.6 shall survive termination of this Agreement.

12.7 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that the Department may assign this Agreement to any State agency or unit of State government that succeeds the Department's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Department to which the Deliverables relate. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide the Department with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of the Department.

12.8 Use of Third Parties. None of the services to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of the Department. The Department's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Department, whether financial or otherwise. Any subcontract to which the Department has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Department may deem necessary. Vendor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. Vendor shall indemnify, defend and hold harmless the Department and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any subcontractor. All subcontracts shall contain provisions for the Department access to the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

12.9 Integration. This Agreement represents the entire Agreement between the parties concerning the subject matter hereof, and neither party is relying on any representation that may have been made which is not included in this Agreement. The Department shall not be bound by any “shrink-wrap” agreement, “click-wrap” agreement, or “sneakwrap” agreement (or any other similar agreement) that may accompany or relate to a Deliverable. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Department on the basis of draftsmanship or preparation thereof.

12.10 Obligation beyond Agreement Term. This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. Vendor’s obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 4.1, 5.1 - 5.4, 5.6 – 5.82, 8.1 - 8.11, 9.1 - 9.4, 10.4 - 10.7, 11, 12.2, 12.3, 12.6, 12.8, 12.10 - 12.15, 12.19, 12.24, 12.28, 12.30, 12.32, 12.33, and 12.38 – 12.40 shall survive termination of this Agreement and/or termination of Support.

12.11 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the Department and Vendor for the goods and services provided in connection with this Agreement.

12.12 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

12.13 Notices.

If to the Department:

Dave Allen
Iowa Department of Natural Resources
502 E. 9th St.
Wallace Office Bldg.
Des Moines, IA 50319

If to Vendor:

Name of Contractor

12.13.1 Notices. Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice

hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS

12.13.2 Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

12.13.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

12.14 Cumulative Rights. The various rights, powers, options, elections and remedies of the Department and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed the Department and the State by law, and shall in no way affect or impair the right of the Department or the State to pursue any other contractual, equitable or legal remedy to which the Department and the State may be entitled as long as any default remains in any way unremedied, unsatisfied, or undischarged. The election by the Department or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

12.15 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

12.16 Timeliness of Performance. The Department and Vendor are aware that many factors outside the Vendor's control may affect the Vendor's ability to complete the services to be provided under this Agreement. The Vendor will perform these services with reasonable diligence and expediency consistent with sound professional practices.

12.17 Authorization. Vendor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Vendor, enforceable in accordance with its terms.

12.18 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties' hereto and their respective successors, assigns, and legal representatives.

12.19 Records Retention and Access. Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit,

excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section.

12.20 Headings or Captions and Terms. The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

12.21 Multiple Counterparts. This agreement shall be executed in two or more counterparts, any one of which shall be an original without reference to the others.

12.22 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Agreement.

12.23 Additional Provisions. The parties agree that if an Addendum, Rider, Schedule, Appendix or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

12.24 Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

12.25 Obligations of Joint Entities. If Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

12.26 Force Majeure.

12.26.1 Neither Vendor nor the Department shall be liable to the other for any delay or failure of performance of this Agreement, and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure" and not as a result of the fault or negligence of a party.

12.26.2 As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of Vendor shall not be

considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force Majeure" does not include financial difficulties of Vendor or any parent, subsidiary, affiliated or associated company of Vendor or claims or court orders that restrict Vendor's ability to deliver the goods or services contemplated by this Agreement.

12.26.3 If a "force majeure" delays or prevents Vendor's performance, Vendor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by the Department.

12.27 Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

12.28 Right of Inspection. Vendor shall allow the Department, or anyone designated by the Department, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.

12.29 Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Department and the State are exempt from the payment of State sales and other taxes.

12.30 Title to Property. Title to all property (including Department Property) furnished by the Department and/or the State to Vendor to facilitate the performance of this Agreement shall remain the sole property of the Department and/or the State. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Department upon the earliest of completion, termination, or cancellation of this Agreement or at the Department's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Vendor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by the Department under this Agreement, shall pass to and vest in the Department and/or State, except as otherwise provided in this Agreement.

12.31 Exclusivity. This Agreement is not exclusive. During the term of this Agreement, the Department may obtain similar services from other service providers.

12.32 Award of Related Agreements. The Department may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with other contractors, consultants and other persons who may be engaged by the Department or the State in connection with this Agreement. Vendor will ensure that any of its contractors or subcontractors that have been approved by the Department will abide by this provision.

12.33 Sovereign Immunity. The Department and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

12.34 Hardware and Equipment. In the event that any hardware and other equipment owned by Vendor and used in connection with this Agreement are subject to the security interest or a legal or equitable interest by a Third Party, Vendor shall insure in any such transactions that the Department shall be notified of a default occurring under the instrument and if Vendor does not cure the default within the time allowed, the Department may, in its sole discretion, cure the default by Vendor and assess or set off all costs associated with affecting cure, including but not limited to, the amount in default and reasonable attorneys fees against Vendor.

12.35 Disclaimer. All information contained in the RFP and any appendices or attachments thereto reflect the information available to the Department at the time the above-cited documents were prepared. The Department does not warrant the accuracy of any such information and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in those documents.

12.36. Procurement by other Governmental Entities. Vendor acknowledges and agrees that other State agencies, departments, boards, commissions, establishments, units and other governmental entities (as defined in Iowa Code Section 8A.101) may procure services and Deliverables from Vendor under this Agreement.

12.37. Assignment of Third Party Warranties. Vendor hereby assigns and shall assign to the Department any and all existing and future warranties, indemnities and other benefits obtained or available from the licensor of any Third Party software or the manufacturer of any equipment or replacement parts provided or otherwise furnished in connection with this Agreement.

12.38. Attorney's Fees and Expenses. Subject to the other terms and conditions of this Agreement, in the event Vendor defaults in any obligations under this Agreement, Vendor shall pay to the Department all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of the Department) incurred by the Department in enforcing this Agreement or any of its rights and remedies with respect thereto.

12.39 Contract Compliance Audit. Vendor agrees that the Department or a representative of its selection may conduct a complete contract compliance audit at least once annually during the term of this Agreement and after termination or expiration of this Agreement to determine whether or not the Vendor is complying with the terms of this Agreement, criteria established for access to Department Property, State and federal laws regarding Confidential Information, and any other applicable laws and regulations. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested by the Department or its representatives. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

12.40 Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and Department Property furnished by the Department for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at the Department request, restore damaged property to the extent possible to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the Department. In addition, at the Department's request, Vendor will reimburse the Department for any loss or

damage to such property caused by Vendor, or any agent, contractor or subcontractor employed or utilized by Vendor. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of the Department and the State. Vendor shall obtain the prior advance written approval from the Department prior to Vendor's use of the name, marks or intellectual property rights of the Department or the State.

12.41 Notification of Events. Vendor shall notify the Department in writing if any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owing a controlling interest in Vendor:

12.41.1 Vendor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

12.41.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or

12.41.3 Making an assignment for the benefit of creditors; or

12.41.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement

12.41.5 An order is entered approving an involuntary petition to reorganize the business of Vendor for all or part of its property; or

12.41.6 If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Vendor is issued by any court or administrative agency against all or any material portion of Vendor's property; or

12.41.7 Taking any action to authorize any of the foregoing.

SCHEDULE A

STATEMENT OF WORK

Purpose

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified service providers to provide dam breach analysis and survey data needed for the breach analysis for specific dams identified by the Department.

Statement of Work

1. Qualifications of Contractor

Survey data shall be certified by a land surveyor licensed in the State of Iowa or a professional engineer licensed in the State of Iowa.

Dam breach analysis work shall be certified by a professional engineer licensed in the State of Iowa.

2. Geographic and Geometric Information Gathering

2.1 The contractor shall obtain geographic and geometric information for the area downstream of the dam that will be affected by a dam failure.

- Cross sections of the flood plain shall be cut from USGS topographic maps (10' contour interval) at an interval not to exceed 1000 feet and at any natural hydraulic control point. Cross sections at control points such as bridges and roads, and leveed areas must be obtained by field survey. Precision of the field survey need be no closer than 0.1 feet vertical and 1.0 feet horizontal.
- Road and stream crossing data must include a road profile and the geometry of the bridge or culvert.
- Information for all affected downstream houses, buildings or other structures must be obtained by field survey. That information shall include the location of the structure, first floor elevation, foundation information (basement, slab on grade, crawl space, etc.), general building type (ranch, two story, pole building, etc.) and building use, if other than a single family home.

2.2 The contractor shall confirm basic information about the dam in order to confirm data from department files and to assure that the dam information and downstream cross sections are on the same reference datum.

- Dam information shall include the principal spillway type, size, and its inlet and outlet elevations; the bottom width of the emergency spillway and the elevation of the control section; the elevation of the top of the dam embankment and elevation of the streambed at the downstream toe of the dam. The survey datum must be in NGVD 1929 or NAVD 88 and that datum must be indicated on the submittals.

2.3 Deliverables

The Contractor shall provide, in both paper and electronic (on compact disc) forms, a summary report of the survey work, certified by a land surveyor licensed in the State of Iowa or a professional engineer licensed in the State of Iowa and containing the following:

- To-scale work maps showing the dam, location of each cross section and the location of all houses, buildings or other structure in the flood plain within the project reach. Elevation and station coordinates must be provided for each cross section.
- A table of all houses, buildings or other structures determined to be in the dam breach flood zone must be provided for each breach analysis. The listing for each structure must include: the UTM coordinates, type of structure, foundation type, lowest floor elevation, low adjacent grade elevation and building use information.

3. Hydraulic Modeling

3.1 The contractor shall perform hydraulic modeling, which must include establishing basin hydrology. The Iowa DNR shall provide the contractor with basic watershed information, including: drainage area, originally computed runoff curve number and time of concentration, stage-storage data for the impoundment, the current presumed hazard classification for the dam and a set of plans for the dam. In addition, that same information will be provided for any dam in the upstream watershed that should be taken into consideration in developing the basin hydrology for the dam under review.

3.2 The contractor shall develop the probable maximum flood (PMF) once the basin hydrology has been established and when applicable, the maximum inflow design flood (maximum flow just prior to the dam overtopping) where the Department deems necessary. The contractor shall determine the dam breach parameters so a breach outflow hydrograph can be developed and that resultant hydrograph routed downstream through the area of concern.

The contractor shall analyze three separate scenarios:

- i) "Sunny day" failure scenario, for dam failure by internal erosion (piping) while the impoundment level is at the principal spillway crest.
- ii) For dams currently classified as having high damage potential, the contractor shall develop the probable maximum flood (PMF). The breach analysis shall be developed at the maximum potential water surface elevation and routed downstream through the area of concern. The PMF shall be run assuming no dam in place and an incremental damage assessment made.
- iii) For dams currently classified as having either low or moderate damage potential, an analysis shall be made to determine the critical flood, either the probable maximum flood or the inflow design flood (the flood which fills the impoundment to the point of overtopping). A failure analysis shall be undertaken assuming the dam fails at the maximum inflow design flood (IDF). The IDF must be routed downstream through the area of concern. An IDF flood assuming no dam in place must also be undertaken and an incremental damage assessment made. If the IDF does not indicate incremental

damage, this becomes the critical flood and no further analysis is needed. If the IDF dam failure flood routing indicates incremental damage, the PMF would become the critical flood. The PMF must then be developed and routed through the area of concern assuming a dam failure scenario and a no dam scenario.

The dam breach hydrograph must be developed using BREACH, HEC-HMS or HEC-RAS (unsteady flow) or DAMBRK software programs or an approved equal. Flood routings must be performed using HEC-RAS (unsteady flow), FLDWAV and DAMBRK.

3.3 Deliverables The contractor shall provide, in both paper and electronic (on compact disc) forms, a breach analysis summary report certified by a professional engineer licensed in the State of Iowa and containing the following:

- Input and output data tables for each of the above-described scenarios.
- Breach inundation mapping for both the sunny day failure and either the IDF breach or PMF breach whichever was determined to be the critical flood. The mapping must be based on 2002 infrared aerial photos with contour lines from USGS topographic map superimposed. Other base maps may be used if approved by the department. The map scale shall be no smaller than 1:24,000 for rural settings and 1:12,000 for urban settings.

4. List of Dams for Analysis

The RFP has been broken down into two sets of dams. The first set is a group of four dams (dam numbers 1 through 4 on the following list) which should be bid on as a lump sum. The second group of dams (dam numbers 5 through 10) should be bid per dam. Based on available funding, any or all of the dams in the second group of dams may be included in the contract.

1. Lake Anita Dam – NE1/4 Section 32, T77N, R34W, Cass County
2. Lake Sundown Dam – SE1/4 Section 29, T70N, R16W, Appanoose County
3. Leisure Lake Dam – NE1/4 Section 30, T86N, R2E, Jackson County
4. Woodland Lakes Estates Dam – NE1/4 Section 7, T80N, R22W, Polk County
5. Marion County Roadgrade Dam – SW1/4 Section 17, T76N, R18W, Marion County
6. Lake Ponderosa Dam – NW/14 Section 10, T78N, R15W, Poweshiek County
7. Anderson Dam – SW1/4, SW1/4 Section 27, T78N, R27W, Dallas County
8. Van Buren Dam – SW1/4, SE1/4 Section 28, T78N, R27W, Dallas County
9. Izaak Walton League Dam – SW1/4 Section 21, T72N, R13W, Wapello County
10. Findley 1 Dam – SE1/4 Section 3, T79N, R25W, Polk County

3.5 Contract Deliverable Summary and Time Frames

The Contractor shall provide time frames for each contract deliverable.

Contract Payment Schedule:

The contract payment schedule shall be based on completion of deliverables by dam. The DNR shall retain 5% of the contract total amount, which shall be paid to the Contractor after completion and upon the final approval of performance of the contract by the DNR. Total contract payment not to exceed \$.